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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,571	08/30/2002	Gregory De Swarte	CM2187FM	7197

27752 7590 08/29/2005

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CINCINNATI, OH 45224

EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/070,571	DE SWARTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Randall Chin	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. The disclosure is objected to because of the following informalities:

On p. 6, line 23, correct "singl-oint".

On p. 7, lines 10-11, "an unitarily" should read --a unitarily--.

Appropriate correction is required.

***Claim Objections***

4. Claims 1, 2, 11, 12, 14 and 15 are objected to because of the following informalities:

Claim 1, line 1, the recitation "such as a toothbrush" makes the claim scope unclear since it is unclear whether such recitation is merely exemplary or a positive limitation. Also, the recitation of a "grooming head" (line 3) and "toothbrush" (line 1) makes the claim awkward. See also claims 12, 14 and 15 which recite a "grooming" head.

On lines 2-3, the phrase "the distal end being connected to, or adapted to connect to" is an alternative recitation rendering the claim vague and indefinite since it's unclear what Applicant intends the claimed invention to be.

Claim 2, before "major", insert --the--.

It appears claim 11 should depend on claim 10 instead because of "the third grip portion".

Claim 14, lines 2-3, the recitation "conceals auxiliary grooming heads or a thinner skeleton" is an alternative recitation rendering the claim vague and indefinite since it's unclear what Applicant intends the claimed invention to be.

Claim 15, line 1, correct "Claim 13 or".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/23910 (hereinafter WO '910).

As well as claim 1 is understood, WO '910 discloses in Figs. 1-3 an elongated handle 12 for a personal care implement or toothbrush 10 having distal and proximal ends, the distal end being connected to a "grooming head" 14 the handle comprising a first grip portion at 16 adjacent the proximal end of the handle for holding in the user's hand, the first grip portion having an ovoid cross-section which has a major axis and a minor axis, and a second grip portion (**just where** ribs/ridges 22 are in Fig. 3) for manipulation by the user's fingers, extending from the first grip portion in the direction of the distal end of the handle, and having, at least in a region adjacent the first grip portion an elliptical cross-section which has a major axis and a minor axis, characterized in that the major axis of the second grip portion is perpendicular to the major axis of the first grip portion.

As for claim 2 reciting that the ratio of the maximum length of the major axis of the first grip portion to the maximum length of the major axis of the second grip

portion is from 1.2:1 to 1.8:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 3 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from 1.4:1 to 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 4 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from 1.3:1 to 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 5 reciting that the first grip portion has a longitudinal length of from 50 to 100 mm, it is well within the level of competence of one skilled in the art to have provided for such a length depending on the intended user (i.e., child or adult) as well as for providing a length for optimal gripping and manipulation.

As for claim 6, the first grip portion 16 is coated with elastomer at 20 (Figs. 1 and 3; p. 3, lines 18-21 and p. 6, lines 7-12).

With respect to claim 7 reciting that the ratio of the major axis of the second grip portion to the minor axis of the second grip portion is from 1.3:1 to 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 8 reciting that the major axis of the second grip portion has a maximum length of from 8 to 14 mm, it is well within the level of competence of one skilled in the art to have provided for such a length for optimal gripping and manipulation.

As for claim 9, WO '910 teaches that the minor axis of the second grip portion extends between top and bottom surfaces thereof and at least one of the top and bottom surfaces has gripping ridges 22 thereon (Fig. 3).

As for claim 10, there is a third grip portion 18 (Fig. 3) distal the second grip portion, the third grip portion being both wider and deeper (merely a relative expression) than the second grip portion.

As for claim 11, the third grip portion 18 is coated with elastomer (Fig. 3; p. 3, lines 18-21).

As for claim 12, the grooming head has bristles 32, 34, 36, 38 (Fig. 7) extending therefrom in a direction generally parallel to the major axis of the first grip portion and is integrally attached to the distal end thereof.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '910 view of Lamond 5,875,510 (hereinafter Lamond '510).

WO '910 teaches all of the recited subject matter with the exception of the first grip portion being removable. Lamond '510 teaches a personal care implement comprising a first grip portion 4 (Fig. 10) that is removable. It would have been obvious to one of ordinary skill in the art to have modified the WO '910 implement such that the first grip portion is removable as taught by Lamond '510 for replacement purposes.

As for claim 14, Lamond '510 also suggests a "grooming head" that is releasably attached for replacement purposes. The WO '910 implement already teaches the first grip portion concealing a thinner skeleton (p. 6, lines 4-12).

As well as claim 15 is understood, the modified WO '910 implement would teach the removable first grip portion "adapted to provide a cap" (not a positive limitation but only requires the ability to so perform) which can fit over the "grooming head."

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Stowell, Veo, Kinoshita, Yamamoto, Beals, Klein, and Ayers are relevant to various implements showing various cross-sections.

10. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is



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(571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

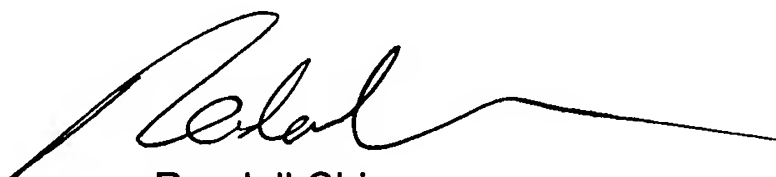
If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, John Kim, can be reached at (571) 272-1142. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin  
Primary Examiner  
Art Unit 1744